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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 172

MINNIE REESE RICHARDSON WRAGG,
Petitioner,

v.

FEDERAL LAND BANK OF NEW ORLEANS.

PETITION FOR WRIT OF CERTIORARI

WALTER J. KNABE,
JACK CRENSHAW, *Attorneys for Petitioner.*

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PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner Minnie Reese Richardson Wragg respectfully prays for a writ of certiorari herein to review a certain final decision of the Circuit Court of Appeals of the Fifth Circuit, in the above entitled action, the opinion and decision of said court having been rendered and filed on February 25, 1942, and a petition for rehearing which was, after being entertained and considered by said Court, denied on March 24, 1942; the effect of which said decision of the Circuit Court of Appeals was that a farm-debtor whose case had erroneously been dismissed and who had filed a petition for reinstatement of her debtor proceedings in due time and before intervening rights had become vested, should be denied such reinstatement and further proceedings because of lack of allegations that a further stay of proceedings would be likely to result in her financial rehabilitation; and further holding that the

fact that debtor had been in possession of the property for several years was material in considering whether her proceedings should be reinstated and further proceedings had; the effect of the decision further was to deny farm debtor the right to refile her petition and preserve the assets of her estate, as provided by the Bankruptcy Act.

QUESTIONS INVOLVED

I.

Whether farm-debtor proceedings, dismissed by the District Court because of an erroneous construction of the law, should be reinstated on petition promptly filed after the Supreme Court of the United States had settled the law by the decision of *John Hancock Mutual Insurance Company v. Bartels*, 308 U.S. 180, 84 L. ed. 176.

II.

Whether such petition for reinstatement should be denied because the court might believe that the debtor had received the equivalent of what the act prescribed.

III.

Whether such petition for reinstatement should be denied because of the absence of an allegation that further proceedings would be likely to result in her financial rehabilitation.

IV.

Whether the rights of a third party purchasing land subject to a statutory right of redemption then outstanding, may cut off or prevent the right of a farmer-debtor to extend the time of redemption by appropriate proceedings under Section 75 of the Bankruptcy Act.

STATEMENT OF FACTS

In 1937, the petitioner Minnie Reese Richardson Wragg filed in the District Court for the Middle District of Alabama her farm-debtor petition for relief under Section 75 of the Bankruptcy Act (R. p. 4). There was pending at that time a proceeding by the Federal Land Bank of New Orleans for foreclosure of mortgage on petitioner's property. Her composition and extension proceedings were duly referred to the Conciliation Commissioner, and petitioner filed her offer of composition and extension. The Federal Land Bank rejected the offer and filed objections to its confirmation. The District Court sustained the objections to the confirmation on the ground that the proposal was not an equitable and feasible method of financial rehabilitation of the debtor. Petitioner then moved for leave to amend, and prayed adjudication as a bankrupt under Subsection (s) of the Act. The Court denied this motion, but did grant fifteen days in which she might become a voluntary bankrupt under the General Bankruptcy Law.

Petitioner did not elect to become a voluntary bankrupt under the General Bankruptcy Law, and on January 19, 1938 her proceedings were dismissed by the District Court. She attempted to appeal to the Circuit Court of Appeals for the Fifth Circuit, but leave to proceed in forma pauperis was denied (95 F. (2d) 252). Petition for certiorari was likewise denied by this Court (303 U.S. 596).

The foreclosure proceedings were thereupon completed, and foreclosure sale to the Federal Land Bank of New Orleans was confifmed on April 21, 1938.

On April 8, 1939, one S. P. Storrs, a third party, offered to purchase from the Federal Land Bank of New Orleans the property of petitioner. This offer recited an agreement to pay $100.00 cash and $100.00 January 1, 1940. The 1939 rents were reserved to the seller. The

offer was expressly conditioned on the sale being made subject to the statutory right of redemption.

The statutory right of redemption in Alabama is two years from the date of sale. This right of redemption expired either on March 12, 1940, two years from the date the sale was held, or on April 21, 1940, two years from the date of confirmation of such sale. On December 11, 1939, this Court rendered its decision in the case of *John Hancock Mutual Insurance Co. v. Bartels*, 308 U.S. 180, holding that the fact that there was no reasonable probability of financial rehabilitation did not authorize the dismissal of proceedings for adjudication under Subsection (s), supra. On March 11, 1940, prior to the expiration of her statutory right of redemption, and shortly after this decision became known to her counsel, petitioner filed a petition in the District Court to reinstate and reopen the proceedings under Section 75 of the Act, and grant her the relief under the supervised debt extensions authorized by said section or, in the alternative, to permit her to refile her petition and schedules. The petition expressly alleged that such proceedings had been improvidently closed and that no intervening rights of innocent third parties had become vested. This petition for reinstatement or in the alternative to refile the proceedings, was dismissed by the District Court, and petitioner appealed to the Circuit Court of Appeals for the Fifth Circuit. The Circuit Court of Appeals on February 25, 1942, rendered its decision and judgment in said cause affirming the judgment of the District Court. Petitioner properly filed petition for rehearing, which was denied by the Circuit Court of Appeals on March 24, 1942. It is to correct this decision that the present proceedings are prayed.

RULINGS OF THE COURT BELOW

The District Court in dismissing petitioner's application for reinstatement of her proceedings, rendered an opinion (34 Fed. Supp. 374) holding that the petition

was not seasonably and diligently filed; that intervening rights had vested which it would be inequitable and unjust to disturb.

The Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below, but assigned different reasons therefor. The Circuit Court of Appeals in its opinion held:

> "Conceding without deciding that the petition was filed in due time and that no intervening rights had become vested, these circumstances alone do not entitle the appellant to the relief sought. Rather, they are conditions precedent to the power of the court to exercise its discretion upon the petition. Unless such facts affirmatively appear, it is the duty of the court forthwith to dismiss the petition. If, on the other hand, these conditions are met, the disposition to be made of the petition then lies within the sound discretion of the bankruptcy court. The court below entertained jurisdiction of the petition, considered it fully, and dismissed it. On this appeal it is incumbent upon the appellant to show an abuse of discretion by the court below. She has not met this burden.
>
> "The petition for reinstatement was filed one day prior to the expiration of the statutory period for redemption. At that time appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage, and had been out of possession for approximately a year. Her petition did not allege that her financial condition had undergone any change, or that a further stay of proceedings would be likely to result in her financial rehabilitation. The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation

unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

REASONS FOR GRANTING

The Circuit Court of Appeals for the Fifth Circuit held, in effect, that the fact that petitioner had been privileged to retain possesion of her property for a certain period of time, approximately the relief provided by Section 75 of the Bankruptcy Act, was material in denying to her the benefits prescribed by that act. Such decision by the Circuit Court of Appeals is in conflict with the applicable decisions of this Court, and particularly the decision of this Court in the case of *Wright v. Logan*, ... U.S. ....., decided February 2, 1942.

The Circuit Court of Appeals for the Fifth Circuit held, in effect, that absence of allegation of likelihood of financial rehabilitation was sufficient to deny to the farm-debtor the relief provided by the statute, which said decision was probably in conflict with the applicable decisions of this Court, and particularly the decision of this Court in *John Hancock Mutual Insurance Co. v. Bartels*, 308 U.S. 180.

The Circuit Court of Appeals for the Fifth Circuit decided a federal question in a way probably in conflict with applicable decisions of this Court, to-wit, that a farm-debtor whose original proceedings were dismissed by the District Court under an erroneous construction of the applicable law, who filed petition for reinstatement or for the right to refile such proceedings before intervening rights had become vested, should be denied such right to refile or to reinstate, and thereby perpetuate the original error in dismissing her original proceedings.

The Circuit Court of Appeals for the Fifth Circuit by

its decision, denied to a farmer the right to file a petition and preserve the assets of the farmer's estate.

CONCLUSION

For these reasons it is respectfully submitted that this petition should be granted.

WALTER J. KNABE,
JACK CRENSHAW,
Counsel for the Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

NO. .....

MINNIE REESE RICHARDSON WRAGG,
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v.

FEDERAL LAND BANK OF NEW ORLEANS,

On Petition For Writ Of Certiorari To The Circuit Court of Appeals of the Fifth Circuit

BRIEF IN SUPPORT OF PETITION

OPINIONS

Opinion of the District Court for the Northern Division of the Middle District of Alabama written by Judge Murphree, sitting specially, was filed August 6, 1940, and appears at pages 41 to 47 of the record. It is reported in 34 Federal Supplement 374.

The opinion of the Circuit Court of Appeals for the Fifth Circuit written by Judge Holmes was filed on February 25, 1942. It is reported in ..... Fed. (2d) .....

JURISDICTION

The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended (U.S.C.A., Title 28, Section 347). The judgment of the Circuit Court of Ap-

peals was entered February 23, 1942. Petition for rehearing was denied March 24, 1942. This petition was filed

STATEMENT OF THE CASE

The facts are stated in the petition. Petitioner's original proceedings under Section 75 of the Bankruptcy Act were dismissed because of an erroneous conception of the law by the District Court. Shortly after this Court settled the law in *Bartels Case*, and before any rights of innocent third parties had intervened, she filed petition for reinstatement or, in the alternative, for leave to refile her proceedings. This was denied by the District Court. On appeal the Circuit Court of Appeals for the Fifth Circuit affirmed the judgment of the court below, holding in effect that the fact that petitioner had been in possession of the property for some years before foreclosure, and the fact that there were alleged no new facts showing a substantial probability of financial rehabilitation, required the continued denial to her of the rights extended to her by Section 75 of the Bankruptcy Law. The decision also had the effect of denying to a farm debtor the right to file farm debtor proceedings and extend the right of redemption, which right was an asset of the farmer which the Bankruptcy Act protects.

ARGUMENT

On March 11, 1940, petitioner by appropriate proceedings sought to correct the error of the District Court in denying to her relief under Section 75 (*s*) of the Bankruptcy Act.

At that time there was in effect a statute of Alabama which provided (Code of Alabama of 1923, Section 10140):

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the

> debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in manner following."

This right of redemption was outstanding in the petitioner.

The District Court in denying to petitioner the relief sought, apparently did so on the theory that her petition was not filed in due time. The petition was filed very soon after this Court, in the case of *John Hancock Mutual Life Insurance Co. v. Bartels*, settled the law in her favor, so that there was no longer any possible question as to the error of the District Court in denying to her relief under Section 75. We submit that until the law had been settled by that decision it could not be said that she was dilatory in not making further efforts to correct the error of the District Court.

The Circuit Court of Appeals in its opinion concedes that the petition was filed in due time and before the rights of innocent third parties had vested. It holds, however, that the matter was then within the sound discretion of the lower court, and the petition should be denied because "at that time appellant had been privileged to retain possession of her property for five years without making any payment on the mortgage, and had been out of possession for approximately a year."

Even had she been in possession of the property for five years after foreclosure, under the decision of this Court in *Wright v. Logan*,

> "Farmers cannot be deprived of the benefits of the Act because a court may believe that they have received the equivalent of what it prescribes."

The Circuit Court of Appeals likewise held it material that her petition did not allege that her financial condition

had undergone any change or that a further stay of proceedings would be likely to result in her financial rehabilitation. This, we submit, perpetuates the original error of the District Court and is in direct conflict with the decision of this Court in *John Hancock Mutual Life Insurance Co. v. Bartels*, 308 US. 180. In the *Bartels Case* this Court held:

> "The subsections of Section 75 which regulate the procedure in relation to the effort of a farmer-debtor to obtain a composition or extension contain no provision for a dismissal because of the absence of a reasonable probability of the financial rehabilitation of the debtor."

The third party who made the offer to purchase the property recognized in his offer that the sale, if completed, would be subject to the right of redemption provided by the statutes of Alabama. The statute then in effect provided (Code of Alabama of 1923, Section 10140):

> "Where real estate, or any interest therein, is sold under execution, or by virtue of any decree in the circuit court, or under any deed of trust, or power of sale in a mortgage, the same may be redeemed by the debtor, junior mortgagee, vendee of the debtor, or assignee of the equity or statutory right of redemption, wife, widow, child, heir at law, devisee, or any vendee or assignee of the right of redemption under this Code, from the purchaser, or his vendee, within two years thereafter in manner following."

The third party took with knowledge that the petitioner could file farm-debtor proceedings at any time before the expiration of that statutory period. Under the express provisions of Section 75 (n), as pointed out by this Court in *Wright v. Logan, supra*, whatever right of redemption the petitioner had was subject to administration by the Bankruptcy Court, and this section extends the period of redemption for the period necessary for the purpose of carrying out the provisions of that section. As of March 11, 1940, therefore, when petitioner applied in the alter-

native for a reinstatement of her proceedings or that the same be treated as refiled, she was clearly within her rights and clearly entitled to the relief provided by Section 75. The District Court by dismissing *in toto* her petition, and making no decision as to the alternative prayer that her proceedings be re-filed, denied to her this right under the statute. The Circuit Court of Appeals in its opinion recognized that this petition to reinstate was in the alternative to permit her to refile her petition and schedules, but affirms the decision of the lower court *in toto* without assigning any reasons for denying to her the right to refile her proceedings as of March 11, 1940. Apparently the only ground for such decision by the Circuit Court of Appeals is the statement: "The third party purchased the land having good reason to believe that the bankruptcy proceedings brought by appellant had been ended by final decree. He had the right to expect, in the absence of his own fault, to use and enjoy the property purchased without molestation unless, as provided by Alabama law, the former owner exercised her right of redemption within two years and tendered to him the purchase price of the property with interest, costs, and the reasonable value of improvements."

This statement by the Circuit Court of Appeals, we submit, overlooks entirely the effect of Section 75 (n) of the Bankruptcy Law upon the statutory right of redemption. The third party took with knowledge that there was outstanding a right of redemption which might be extended under the provisions of the Bankruptcy Act. Petitioner's right to such extension under the Bankruptcy Act was denied to her and we submit that such denial by the Circuit Court of Appeals was contrary to the decisions of this Court cited above.

Respectfully submitted,

WALTER J. KNABE,
JACK CRENSHAW,
Counsel for the Petitioner.